

Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0111
September 23, 2013

ENTERED
Office of Proceedings
September 23, 2013
Part of
Public Record

Re: Petition for Rulemaking to Adopt Revised Competitive Switching Rules,
Docket No. Ex Parte 711
**Notice of Intent to Participate and Request for Access to the
Confidential Carload Waybill Sample**

Dear Ms. Brown:

My name is Tom O'Connor. I am President of the Tom O'Connor Group, LLC.

Pursuant to the Board's decisions in the above-referenced proceeding (See Attachment A - STB August 12, 2013 Decision), this letter provides notice of intent to participate and requests access to the Surface Transportation Board (STB) Confidential Carload Waybill Sample of 2010 and 2011, the most recent two years available.

This notice of intent to participate and request for access to the STB Confidential Carload Waybill Sample is on behalf of our clients:

- Indorama Ventures EO & Glycols, Inc., based in Bayport, TX,
- StarPet, Inc. based in Asheboro, NC,
- AlphaPet, Inc. based in Decatur, AL,
- Auriga Polymers Inc. based in Charlotte, NC and Forster, Greer and Spartanburg, SC

Indorama Ventures, StarPet, AlphaPet, and Auriga Polymers Inc., collectively the Indorama chemical industry clients, have requested our services to help in determining and analyzing the economic implications resulting from any proposed switching rule changes. To meet the filing dates we would appreciate expedited consideration of this request.

The actual economic implications in the above referenced proceeding require a thorough analysis of the STB Confidential Waybill Sample for the most recent years. The Tom O'Connor Group has previously been granted access to the STB Confidential Carload Waybill Sample for use in this proceeding. We are thoroughly experienced with accessing and analyzing data provided in the STB Confidential Carload Waybill Sample. We are transportation economists and have participated in numerous proceedings before the Board, including this proceeding.

We acknowledge and have agreed that use of this information is limited to this proceeding and we have also agreed to the STB confidentiality and protective conditions. The data provided will be accessed only by Tom O'Connor, John Legieza and assigned staff, all of whom will be the

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individuals of record working on behalf of our Chemical industry clients for purposes of this proceeding.

The Indorama chemical industry clients noted above will file with the Board on or before September 23 the requested three page outline of our intended participation in the hearings. The hearings are scheduled to be held on October 22, 2013, beginning at 9:30 a.m., in the Board's Hearing Room, at 395 E Street, S.W., Washington, DC.

The proposed speaker for Indorama is Phillip C. Rine, Director Logistics, Auriga Polymers Inc. Mr. Rine will be accompanied by Tom O'Connor. We request 15 minutes, and will provide a summary of the intended testimony not to exceed three pages, on or before September 23, 2013.

Respectfully submitted,

Tom O'Connor

Electronically signed
The Tom O'Connor Group, LLC
13222 Point Pleasant Drive
Fairfax, VA 22033

Attachment A

43238 SERVICE DATE – AUGUST 13, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 711

PETITION FOR RULEMAKING TO ADOPT REVISED

COMPETITIVE SWITCHING RULES

Decided: August 12, 2013

AGENCY: Surface Transportation Board.

ACTION: Notice of public hearing.

SUMMARY: The Surface Transportation Board (the Board) will hold a public hearing to explore further the issues surrounding the petition by The National Industrial Transportation League (NITL) and the related comments filed in this proceeding.

DATES: The hearing will be held on October 22, 2013, beginning at 9:30 a.m., in the Hearing Room at the Board's headquarters located at 395 E Street, S.W., Washington, DC. The hearing will be open for public observation. Any person wishing to speak at the hearing shall file with the Board a notice of intent to participate (identifying the party, the proposed speaker, and the time requested), and a summary of the intended testimony (not to exceed three pages), no later than September 23, 2013. The notices of intent to participate and the summaries of testimony are not required to be served on the parties of record in this proceeding; they will be posted to the Board's website when they are filed.

ADDRESSES: All filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the "E-FILING" link on the Board's website at "www.stb.dot.gov." Any person submitting a filing in the traditional paper format should send an original and 10 copies of the filing to:

Surface Transportation Board, Attn: Docket No. EP 711, 395 E Street, S.W.,
Washington, DC 20423-0001.

Copies of written submissions will be posted to the Board's website and will be available for viewing and self-copying in the Board's Public Docket Room, Suite 131. Copies of the submissions will also be available (for a fee) by contacting the Board's Chief Records Officer at (202) 245-0238 or 395 E Street, S.W., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn at (202) 245-0382. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

SUPPLEMENTARY INFORMATION: By decision served on July 25, 2012, the Board began a proceeding to consider a proposal submitted by NITL to modify the Board's standards for mandatory competitive switching. Under its proposal, certain captive shippers located in terminal areas would be granted access to a competing railroad if there is a working interchange within a reasonable distance (30 miles under NITL's proposal). In its decision, the Board sought empirical information about the impact of the proposal if it were to be adopted. The Board received numerous comments in response to its decision. In order to explore further NITL's proposal and the issues raised in the submitted comments, the Board will hold a public hearing.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A public hearing in this proceeding will be held on October 22, 2013, at 9:30 a.m., in the Board's Hearing Room, at 395 E Street, S.W., Washington, DC, as described above.

2. By September 23, 2013, any person wishing to speak at the hearing shall file with the Board a notice of intent to participate (identifying the party, the proposed speaker, and the time requested), and a summary of the intended testimony (not to exceed three pages). The notices of intent to participate and the summaries of testimony are not required to be served on the parties of record in this proceeding; they will be posted to the Board's website when they are filed.

3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. EP 711

**PETITION FOR RULEMAKING TO ADOPT REVISED
COMPETITIVE SWITCHING RULES**

Summary of Issues and Comments by Indorama

As noted in prior Surface Transportation Board (STB) decisions in this case, one of which is shown in the following excerpt, the Surface Transportation Board seeks empirical evidence to evaluate the impact of the Proposal to Adopt Competitive Switching Rules. This summary was prepared by the Tom O'Connor Group at the request of Indorama and outlines a summary of testimony Mr. Phillip Rine plans to present in oral testimony on October 22 in Ex Parte 711.

This [Ex Parte 711] decision begins a proceeding to consider a proposal submitted by The National Industrial Transportation League (NITL) to increase rail-to-rail competition. Under its proposal, certain shippers located in terminal areas that lack effective competitive transportation alternatives would be granted access to a competing railroad, if there is a working interchange within a reasonable distance (30 miles under NITL's proposal). The Surface Transportation Board (the Board) is seeking empirical information about the impact of the proposal, if it were to be adopted. Specifically, the Board is seeking public input on the proposal's impact on rail shippers' rates and service, including shippers that would not benefit under NITL's proposal; the proposal's impact on the rail industry, including its financial condition and network efficiencies; and methodologies for the access price that would be used in conjunction with competitive switching.

- **The need for revised Competitive switching is widely recognized and long standing.**
 - NITL filed its petition almost two years ago, following hearings held at the conclusion of the EP 705 docket on competition in the industry. In the January 11, 2011 STB decision instituting EP 705- now well over 28 months ago - the Board opined that events "... it is time for the Board to consider the issues of competition and access further." Indorama intends to show that Competitive Switching
 - The record in EP 705 amply shows that existing regulatory rules have only partially achieved the purpose of the Staggers Act. For many shippers in a wide range of industries, many of whom are captive shippers; access to competition has been reduced or eliminated.

- **Many parties have noted and Indorama strongly supports the position that the revised Competitive switching should not block rate reasonableness remedies**
 - Specifically, when the competitive switching rules are revised, they must clearly provide that where an otherwise captive shipper utilizes the revised rules to obtain additional rates from a competing railroad, the existence of those rates shall not be considered as “effective competition”
- **Railroads have shown tendencies to serve their own interests to the diminishment or exclusion of “captive” shipper interests and the public interest**
 - **Examples of favoring railroad interests over “captive” shipper interests and the public interest include excessive rates, excessive charges, paper barriers, over-recovering and excessive fuel surcharges, restricted and sub-optimal routing and other “me first” techniques¹**
 - **Indorama executive’s experience spans the time period preceding and subsequent to passage and implementation of the Staggers Act. We have observed that as competitive options decrease rates increase. The proposed revised competitive switching rules can serve to mitigate some of the adverse effects of this loss of access to competitive alternatives.**
 - **Indorama operates extensively in both the US and Canada. In our experience and observation the Canadian competitive switching process operates effectively. It provides major benefits and has not resulted in significant adverse effects.**

¹ See for example the filing by Alliance for Railroad Competition Reply Comments 5/30/13

- Impacted railroad revenues and traffic volumes would be relatively small. USDA and US DOT each independently found that the impact on railroad revenues and traffic volumes would be relatively small. USDA estimates of the impact of Competitive Switching on railroad revenues and traffic volumes, are consistently low
- Analyses entered in evidence showed that while 37 percent of CN and CP traffic was eligible for interswitching in 2011 less than 4 percent of Canadian traffic is interswitched annually. This indicates that Competitive Switching will have a minor impact on railroad revenues and volume
- Indorama expects that the costs related to Interswitching will be limited in scope and may be offset by additional revenues. The remaining net costs, if any, can be passed on to the shippers involved. Indorama is open to the idea of sharing the costs of gaining access to competitive rail switching.
- In summary: Indorama will present the following points:

Indorama supports the NITL proposal

Indorama supports the NITL proposal, which will help to remedy several issues centering on access to competition while recognizing and accommodating the ongoing need for railroads to maintain adequate financial strength and continue to build efficiency and productivity.

Access Price to be used in competitive switching.

Indorama supports the use of a mutually agreed trackage rights fee or haulage rights fee for covering the costs associated with reaching the competitive switching carrier. Both trackage rights fees and haulage rights fees are well-established concepts in the rail industry.² If the parties in a given switching access situation cannot agree on such fees, we recommend that the Board prescribe a reasonable access fee.

² Trackage rights are agreements whereby a railroad company secures the right to run its trains on tracks owned by another railroad company. Generally speaking, with trackage rights railroad A allows railroad B the authority to operate over railroad A's tracks using railroad B's locomotive power and crews. Haulage rights are more restrictive - usually railroad A agrees to handle railroad B's traffic at an agreed upon per car or per mile rate, utilizing railroad A's crews. Locomotive power for use in haulage rights is also negotiated and could be provided by either railroad A or B depending on the specific agreement. [we will single space this]

Commodities Analyzed

In this testimony the focus is on the principal commodities transported by Indorama. These commodities are: PET and MEG. Tom O'Connor Group, LLC analyzed and reflect the 2011 Board's Confidential Waybill file made available for use in this proceeding: however the Tom O'Connor Group also relies on analyses of GLE Indorama data.

The Board's confidential waybill data includes data for the Indorama commodities. The following chart reflects 5 digit Standard Transportation Commodity Code (STCC) aggregations and reports average, minimum and maximum Revenue to Variable Cost (R/VC) percentages reflecting R/VC 180% and 240% selection thresholds for the commodities The Tom O'Connor Group analyzed.

Commodity	R/VC Metrics	R/VC	R/VC= or >240%	R/VC = or >180%
	2011 Waybill	2011 Waybill	2011 Waybill	2011 Waybill
PET	Average	184%	352%	292%
STCC 28211xx	Minimum	[Redacted]	[Redacted]	[Redacted]
	Maximum	[Redacted]	[Redacted]	[Redacted]
MEG	Average	194%	327%	260%
STCC 28185xx	Minimum	[Redacted]	[Redacted]	[Redacted]
	Maximum	[Redacted]	[Redacted]	[Redacted]

The above averages are based on a 5-digit analysis of the STB 2011 waybill file. We will redact any data which does not comport with the required minimum number of reporting shippers. The preceding table illustrates this by redacting the cells reporting minimum and maximum R/VC data results.

Commodity	R/VC Metrics 2011 Waybill	R/VC 2011 Waybill	R/VC= or >240% 2011 Waybill	R/VC= or>180 >180% 2011 Waybill
PET only	Average	242%	339%	288%
7 digit STCC	Minimum	[Redacted]	[Redacted]	[Redacted]
STCC 28211xx	Maximum	[Redacted]	[Redacted]	[Redacted]
MEG only	Average	198%	329%	257%
7 digit STCC	Minimum	[Redacted]	[Redacted]	[Redacted]
STCC 28185xx	Maximum	[Redacted]	[Redacted]	[Redacted]

The above averages are based on a 7-digit analysis of the unmasked waybill. For PET at 7 digits we analyzed 549 lanes. For MEG at 7 digits we analyzed 204 lanes. We will redact any data which does not comport with the required minimum number of reporting shippers. The preceding table illustrates this by redacting the cells reporting minimum and maximum R/VC data results.

The preceding charts are summaries of two major Indorama commodities at the 5 digit and 7 digit STCC levels and are drawn from the Board's 2011 confidential waybill data. These results reflect all railroads included in the Board's confidential waybill data and are germane to our determining the reasonableness of the rates received or proposed by rail carriers serving Indorama. Indorama had previously requested The Tom O'Connor Group to review and benchmark the level of certain rail rates. In this analysis The Tom O'Connor Group draws on its prior work for Indorama. This analyzed rail rates for inbound movements of MEG and outbound shipments of PET.

The Tom O'Connor Group calculates the rate levels for the various commodities involved using rates, costs, and the ratio of railroad revenue to variable cost ("R/VC") of transporting PET and MEG. The R/VC ratio is a measure of profitability and the railroad markup of rail rates above the variable costs incurred. By calculating the variable costs of the particular movement, it is possible to determine margins and levels of the profitability of Indorama shipments to rail carriers. The variable cost calculations from the R/VC analysis provide a base line of the railroad's variable cost and margins. The Tom O'Conner Group based its calculations

of a railroad's variable costs on unit costs developed using the Board's Uniform Rail Costing System ("URCS"). URCS is the Board's railroad general purpose costing system used to estimate variable and total unit costs for Class I U.S. railroads. URCS develops costs for U.S. rail carriers.

URCS is used by the Board for a variety of statutory and non-statutory functions. URCS is statutorily required for making the jurisdictional determination in railroad maximum rate reasonableness proceedings. URCS is also used to develop variable costs for making cost determinations in abandonment proceedings; to provide the railroad industry and shipper with a standardized costing model; as well as for costing the STB Car Load Waybill Sample to develop industry cost information; and to provide interested parties with basic cost information.

Analytical Methodology

The methodology The Tom O'Connor Group used to calculate variable costs follows the procedures used in the Board's rate reasonableness proceedings³. In Ex Parte 589, *Calculation of Variable Costs in Rate Complaint Proceedings Involving Non-Class I Railroads*, the Board concluded that it is appropriate to use Class I railroad regional unit costs to calculate the variable costs of a short line railroad in regulatory proceedings. Such railroads may be involved in providing competitive switch access.

The proposed 240 percent R/VC is a reasonable guideline

The Tom O'Connor Group reviewed the STB costed Waybill Sample and the 2011 STB stratification report which also reflects URCS costs. Those empirical results support the use of 240% R/VC as indicating highly remunerative traffic for the railroad involved.

Using 240 percent as an indicator of highly profitable traffic is a reasonable standard that satisfactorily addresses market dominance issues as a guideline to rate reasonableness.

The 240% R/VC threshold used in conjunction with the presence of a workable interchange within about 30 miles produces a reasonable screen for determining whether to allow competitive switching access.

Based on its review The Tom O'Connor Group found that most of the Indorama shipment lanes analyzed had access to a competing railroad switch provider within about 30 miles.⁴

Findings and Conclusions

This analysis found that many of the Indorama lanes produced an R/VC greater than or equal to 240%. These results support the pro-competitive benefits of the NITL proposal and do not support concerns, which may be voiced by some parties that the NITL proposal could cause dislocations in the markets to which it would apply. The relatively high R/VC results indicate

³ As outlined in 49 U.S.C. § 10707(d)(1)(B); Ex Parte 657 (Sub-No.1), *Major Issues in Rail Rate Cases* (Served October 30, 2006) at 60 ("Major Issues"); and STB Ex Parte 646, *Simplified Standards for Rail Rate Cases* (served September 5, 2007) at 26 ("Simplified Standards").

⁴ As noted above the GLE Corn shipments typically do not move by rail.

that in a competitive switching situation a competing railroad may enter and secure rail business at highly profitable levels. The incumbent railroad would also have the option of holding the business while remaining highly profitable. Practical experience suggests that the incumbent railroad would likely retain the business in many, if not most, cases.

This suggests that shippers may make relatively modest gains with new competitive switching access and there would consequently be less adverse impact on other shippers than some have projected.

Our conclusion based on this analysis is that the NITL proposal will have beneficial effects in PET and MEG markets without leading to significant adverse effects on other shippers or the rail system as a whole.

Recommendation

The findings outlined in this report support proceeding with implementation of the NITL proposal and Indorama recommends that the Board do so.